

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

BERTHA M. BENTON,

Plaintiff,

VS.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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CIVIL ACTION FILE  
NO. 7:05-CV-117 (HL)

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NOTICE OF FILING OF MOTION TO DISMISS

Defendant Barnhart has filed a motion seeking dismissal of the above-styled action alleging plaintiff's failure to state a claim upon which relief may be granted inasmuch as this Social Security is allegedly untimely filed. The plaintiff is advised of her opportunity to respond to the Defendant's motion to dismiss pursuant to the dictates of the following notice:

Since plaintiff is proceeding *pro se*, the court deems it appropriate and necessary to advise her of her right to respond to said motion and of the consequences which she may suffer if she fails to file a response thereto.

Plaintiff is advised that:

- (1) a MOTION TO DISMISS has been filed herein by Defendant Barnhart;
- (2) plaintiff has the right to oppose the granting of said motion; and
- (3) if plaintiff fails to oppose said motion, her complaint may be dismissed.

Plaintiff is further advised that under the procedures and policies of this court, motions to dismiss are normally decided on briefs. The court considers the pleadings and briefs filed by the parties in deciding whether dismissal is appropriate under the law.



**FAILURE OF THE PLAINTIFF HEREIN TO RESPOND TO THE MOTION TO DISMISS MAY RESULT IN THE GRANTING OF THE MOTION.** Upon the recommendation of the Magistrate Judge, the District Judge could then grant the motion to dismiss. There would be no trial or further proceedings herein.

Accordingly, the plaintiff may file a response to said motion to dismiss **WITHIN TWENTY(20) DAYS OF RECEIPT OF THIS ORDER.** Thereafter, the court will consider the motion and any opposition to same filed by the plaintiff.

**SO NOTICED**, this 19<sup>th</sup> day of April 2006.

/s/ *Richard L. Hodge*

RICHARD L. HODGE

UNITED STATES MAGISTRATE JUDGE